

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE WILLIAM PENN LIFE INSURANCE  
COMPANY OF NEW YORK,

Plaintiff,

-against-

KIMBAL VISCUSO, CHARLES M. BIRNS  
and BETH S. MARTIN-BIRNS,

Defendants.

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**AFFIDAVIT**

08 Civ. 1141 (WCC)

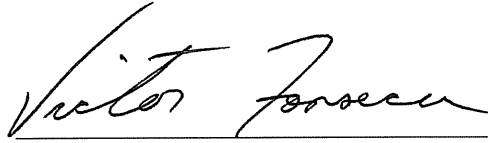
**ECF CASE**

STATE OF NEW YORK     )  
                                  :SS.:  
COUNTY OF NASSAU     )

VICTOR FONSECA, being duly sworn, deposes and says:

1. I am the Claims Supervisor of The William Penn Life Insurance Company of New York.
2. I am advised by our attorneys that it is discussed in William Penn's memorandum of law that Section 3214 of the New York Insurance Law provides for the payment of interest on the proceeds of life insurance policies issued in New York from the date of death of the insured at the rate paid on funds left on deposit with the life insurance company under the interest settlement option. The subject policy provides for a rate of interest of "at least 5 ½ % " for funds left on deposit. See page 12 of the policy annexed as Exhibit "B" to the Meade Affidavit submitted in support of this motion.
3. The policy further provides that "(t)he Company may elect to credit interest at a

higher rate.” However, no such election has been made since the interest settlement rate has been fixed at 3% for policies which do not have a guaranteed minimum rate of interest since prior to April 4, 2007, the date of death of the insured. Consequently, the applicable rate of interest on the subject policy is 5 ½ %.



VICTOR FONSECA

Sworn to before me this  
7<sup>th</sup> day of February, 2008

  
NOTARY PUBLIC

**LAURIE DITARANTO**  
Notary Public, State of New York  
No. 01DI4734445  
Qualified in Nassau County  
Commission Expires August 31, 2008